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OFFICE OF THE
FEDERAL MARITIME COMMISSION

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 09-08

**SSA TERMINALS, LLC
AND
SSA TERMINALS (OAKLAND), LLC**

COMPLAINANTS

v.

**THE CITY OF OAKLAND, ACTING BY AND THROUGH
ITS BOARD OF PORT COMMISSIONERS**

RESPONDENT



COMPLAINT

Complainants, SSA Terminals, LLC and SSA Terminals (Oakland), LLC, (jointly referred to herein as "SSAT"), by and through the undersigned hereby files this Complaint against the City of Oakland, acting by and through its Board of Port Commissioners ("Port") alleging violations of the Shipping Act of 1984, as amended (46 U.S.C. § 40101 *et seq.*) (the "Shipping Act").

I. Complainant

A. Complainant SSA Terminals, LLC is a Delaware limited liability company. Complainant SSA Terminals (Oakland), LLC is a California limited liability company.

B. The corporate offices of SSA Terminals, LLC and SSA Terminals (Oakland), LLC are located at 1131 SW Klickitat Way, Seattle, WA 98134. SSA Terminals, LLC is the assignee under the Berths 57-59 Amended and Restated Non-

Exclusive Preferential Assignment Agreement (“SSAT Assignment”). Certain of the rights and obligations of SSA Terminals, LLC under the SSAT Assignment were assigned to SSA Terminals (Oakland), LLC pursuant to a subassignment agreement effective January 30, 2009 (“Subassignment Agreement”).

II. Respondent

A. The Port is a municipal department established and existing under Article VII of the Charter of the City of Oakland and having offices at 530 Water Street, 6th Floor, Oakland, California 94607.

B. The Port owns marine terminal facilities in Oakland, California.

III. Jurisdiction

A. The Port is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14).

B. The Port and SSA Terminals, LLC are parties to the SSAT Assignment. The Port consented to the Subassignment Agreement on January 27, 2009.

C. The Port and Ports America Outer Harbor Terminal, LLC (“PAOHT”) are parties to the Port of Oakland Concession and Lease Agreement for Berths 20-24 (“PAOHT Lease”).

D. The Commission has jurisdiction over this Complaint, which is filed pursuant to the Shipping Act, 46 U.S.C. § 41301, because the Port is a marine terminal operator subject to the Act and the actions of the Port which are the subject of this Complaint constitute violations of the Shipping Act.

IV. Statement of Facts and Matters Complained of

A. SSAT seeks a cease and desist order and reparations for injuries caused to it by the Port's violations of the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c), including the Port (a) having given and continuing to give an undue or unreasonable prejudice or disadvantage with respect to SSAT; (b) having given and continuing to give an undue or unreasonable preference or advantage with respect to PAOHT; (c) having refused and continuing unreasonably to refuse to deal or negotiate with SSAT; and (d) having failed and continuing to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property.

B. The Port's agreement with PAOHT violates the foregoing provisions of the Shipping Act by granting and continuing to grant PAOHT unduly and unreasonably more favorable terms for the rental and use of marine terminal facilities than those provided to SSAT.

C. In 2008, the Port issued a Request for Qualifications ("RfQ") for the lease of Berths 20 through 24 in the Outer Harbor Berth Area ("Concession Area").

D. The RfQ informed offerors that the historical volume throughput at Berths 20 through 24 was between 300,000 and 480,000 Twenty Foot Equivalent Units ("TEUs") per year.

E. An objective of the Port in issuing the RfQ was to "maximize the combined present values of an upfront fee, to the extent one is required, together with the minimum annual guarantees (MAG) and reasonably expected variable volume payments that will be payable to the Port over the life of the concession."

F. On or about September 5, 2008, the Port issued a Request for Proposals ("RfP"). Although it deviated from the RfQ, the RfP was issued only to these proposers short listed by the Port based on the Port's evaluation of the Statements of Qualifications received in response to the RfQ. The RfP was not issued to other persons or port tenants such as SSAT.

G. An addendum to the RfP was issued on January 9, 2009. Responses to the RfP were due on February 17, 2009.

H. The agenda report issued for the March 3, 2009 board meeting ("Agenda Report"), among other things, recommended that the Executive Director of the Port be authorized to execute the PAOHT Lease.

I. The PAOHT Lease has been signed by PAOHT, and, on information and belief, will be signed by the Port in December 2009.

J. Under the PAOHT Lease, PAOHT has leased approximately 175 acres at Berths 20 through 24 in the Outer Harbor Berth Area ("PAOHT Premises").

K. The PAOHT Premises include a continuous 4,500 ft. series of berths that have been reconstructed and/or retrofitted to support post-Panamax vessels.

L. The PAOHT Premises have easy access to freeway connection for truck transports, including close proximity to I-580, and I-80 for east and west bound traffic and I-880 for north and south bound traffic. Additionally, the PAOHT Premises will have access to significant near-dock intermodal capacity and are located near the largest air cargo hub in Northern California (Oakland International Airport.)

M. Pursuant to Article 25.1 of the PAOHT Lease, PAOHT may, but is not required, to pursue or make capital improvements at the PAOHT Premises. The

expansive scope of the PAOHT Premises permits construction while marine terminal operations continue.

N. The PAOHT Premises are fully operational today and can serve and are serving ocean common carriers. PAOHT can compete with SSAT without making any capital improvements to the PAOHT Premises.

O. The PAOHT Premises represent a quarter of the overall maritime area in the Port with berth depth of 50 feet.

P. Multiple maintenance and repair facilities, gates, refrigerated cargo handling areas and administrative areas are located throughout the PAOHT Premises.

Q. The initial term of the PAOHT Lease expires December 31, 2059.

R. SSAT or its predecessors have been a tenant of the Port since 1966.

S. Pursuant to the SSAT Assignment, the Port has granted to SSAT a non-exclusive preferential assignment of approximately 151 acres of improved land and water area referred to as "Berths 57-59" in the Middle Harbor Terminal Area, also known as the Oakland Intermodal Container Terminal ("SSAT Premises").

T. The initial term of the SSAT Assignment is 15 years, expiring October 18, 2017. This term extends beyond the forecast period utilized by the Port in evaluating the PAOHT lease. SSAT has two 5-year option periods to extend the SSAT Assignment.

U. The SSAT Assignment is for a non-exclusive preferential assignment, as opposed to the PAOHT Lease, which is a lease permitting the use by secondary users only in the event of "Major Events", i.e. natural disaster, national emergency, material destruction of the Port Area (as defined in the Charter of the City of Oakland), war, Act of God, or other major event that substantially interferes with operation in the Port

Area. In contrast, the SSAT Assignment allows for the Port or the Port's designees ("Secondary Users") to berth vessels or load and discharge cargoes on the SSAT Premises as long as such use does not unnecessarily interfere with SSAT's operations.

V. SSAT and PAOHT are similarly situated as they are both tenants of the Port, providing marine terminal services to ocean common carriers moving container cargo under similar transportation circumstances.

W. SSAT and PAOHT are competing for the same business of ocean common carriers at the PAOHT Premises and SSAT Premises, respectively.

X. The facilities provided to SSAT are comparable to facilities provided to PAOHT in that both are fully capable of providing similar services to ocean common carriers.

Y. SSAT and PAOHT have been accorded significantly different treatment. For example, PAOHT will pay in 2010 Basic Rent of \$19,500,000 for the 175 acres in the PAOHT Premises. This rent is in lieu of charges that would otherwise apply under the Port's tariff for (i) dockage and (ii) wharfage, wharfage demurrage and wharf storage. When amortization of an upfront fee of \$60 million and the guaranty required by the PAOHT Lease are factored in, this results in 2010 rent of approximately \$137,229 per acre.

Z. SSAT, on the other hand, for its 151 acres, has a minimum annual guarantee ("MAG") and Standard Breakpoint Level ("BPL") in 2010 of 2,400 TEU per acre. After application of the basic and overage all inclusive throughput rates, the projected per acre charge for 2010 is approximately \$240,000.

AA. The projected variance between the assignment of the SSAT Premises and the lease of the PAOHT Premises in 2010 is approximately \$102,829 per acre or

over \$15.5 million for 2010 alone. This variance is projected to increase dramatically in subsequent years.

BB. In addition, the Port has leased four (4) port cranes to PAOHT without any additional rent.

CC. SSAT has already lost substantial business, over 51,500 containers a year, because of SSAT's significantly higher rentals. The initial loss of 51,000 containers resulted from the movement of three services to Berth 24, currently utilized by International Transportation Services, Inc. ("ITS"). ITS's per acre rate for its space assignment at Berth 24 is comparable to the favorable lease terms provided to PAOHT. Berth 24 will be released to PAOHT pursuant to the PAOHT Lease on January 1, 2010. On information and belief, arrangements have been made for these services to remain at Berth 24 after January 1, 2010, taking advantage of the preferred rates in the PAOHT Lease.

DD. This lost business will result in a loss of gross revenues to SSAT of over \$16.5 million per year. If the unreasonable preference to PAOHT is not remedied, additional SSAT business of approximately 200,000 containers a year could move to the PAOHT Premises as a result of the lower rates PAOHT is able to offer due to its significantly more favorable lease terms. This would result in a total loss of approximately \$79.5 million per year to SSAT.

EE. The movement of cargo from SSAT to the PAOHT Premises was wholly anticipated and foreseen by the Port. In evaluating the PAOHT Lease, the Port's consultants warned that some of the carriers utilizing the SSAT Premises would switch to the PAOHT Premises beginning in 2010.

FF. Lower rates are the only reason offered by SSAT's customers for leaving or threatening to leave the SSAT Premises for the PAOHT Premises. PAOHT will be able to offer lower rates due to the undue and unreasonable preferences favoring PAOHT in the rent it will pay the Port.

GG. The Port's actions are the proximate cause of damage to SSAT.

HH. Despite SSAT's request that the Port take action to remedy the extremely unfair and prejudicial treatment of SSAT so that it can compete for business on a more equal footing with PAOHT, the Port refuses to deal with SSAT and continues to refuse to deal with SSAT and has continued the foregoing undue and unreasonable preferences favoring PAOHT and prejudices disadvantaging SSAT.

II. There is no valid transportation factor for the foregoing undue or unreasonable prejudices against SSAT and undue or unreasonable preferences advantaging PAOHT or for the Port's refusal to deal with SSAT.

JJ. The projected movement of containers cargo from the SSAT Premises to the PAOHT could result in cumulative revenue losses to the Port from the SSAT Assignment of over \$100,000,000 prior to the expiration of the initial term of such assignment.

KK. PAOHT has made no commitment in the PAOHT Lease to bring substantial new business to the Port.

LL. PAOHT has made no commitment in the PAOHT Lease to make substantial capital improvements to the PAOHT Premises.

MM. Although the Agenda Report stated that the PAOHT proposal "included a business plan that would invest over \$2.5 billion to improve the terminal over the life of the concession," it claimed that the PAOHT Lease is "categorically exempt from

requirements of the California Environmental Quality Act ("CEQA") pursuant to the Port CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing."

NN. SSAT and PAOHT are not inherently different, do not operate under different transportation circumstances, have no difference in cargo characteristics handled at the terminals, and are equally creditworthy.

OO. SSAT is not receiving benefits proportionate to the charges allocated to it, while PAOHT is receiving equal or greater benefits but does not pay as much as SSAT.

PP. The differences between the PAOHT Lease and the SSAT Assignment unjustly and excessively disfavor SSAT, although SSAT is contractually committed to moving a substantially higher volume of cargo through the Port than is PAOHT.

QQ. Unlike SSAT which has a Minimum Annual Guarantee per acre, PAOHT does not have a Minimum Annual Guarantee.

RR. PAOHT has 15 years to meet its aggregate Interior Point Intermodal ("IPI") Cargo minimum of 250,000 TEU. This is approximately 16,666 TEU per year.

SS. SSAT, by contrast, has a 2010 minimum of 74,880 TEUs of IPI cargo. This amount is subject to additional increases.

TT. The difference in payments made by SSAT and PAOHT are unjustly and unreasonably excessive.

V. Violations of the Shipping Act

A. As a result of the foregoing, the Port has violated and continues to violate the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c).

VI. Injury to SSAT

A. As a result of the Port's aforementioned violations of the Shipping Act, SSAT has sustained and continues to sustain injuries and damages, including but not limited to lost business and higher rents, costs, and other undue and unreasonable payments and obligations to the Port. SSAT believes its damages are in the millions of dollars. A more precise amount will be determined at hearing.

VII. Prayer for Relief

A. Statement regarding alternative dispute resolution procedures: SSAT has met directly with Port officials in an attempt to resolve this dispute, but the Port has rebuffed SSAT's requests. Therefore, SSAT does not believe that alternative dispute resolution procedures would be productive and SSAT has not consulted with the Commission's dispute resolution specialist.

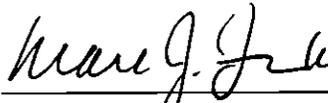
B. **WHEREFORE**, Complainant SSAT prays that the Port be required to answer the charges in this Complaint; that after due hearing in Washington, D.C. an order be made commanding the Port to cease and desist from engaging in the aforementioned violations of the Shipping Act, putting in force such practices as the Commission determines to be lawful and reasonable; and that an order be made commanding the Port to pay SSAT reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees, and any other damages to be determined; and that the Commission order any such other relief as it determines appropriate.

Date: December 11, 2009

Respectfully submitted,



Jon E. Rosselle
Vice President
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SSA Terminals (Oakland), LLC



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COMPLAINANTS

v.

**THE CITY OF OAKLAND, ACTING BY AND THROUGH
ITS BOARD OF PORT COMMISSIONERS**

RESPONDENT

**COMPLAINANTS' FIRST SET OF INTERROGATORIES
PROPOUNDED ON THE CITY OF OAKLAND,
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS**

Complainants, SSA Terminals, LLC and SSA Terminals (Oakland), LLC, jointly referred to herein as "SSAT", by their undersigned counsel, hereby propound the following Interrogatories upon Respondent City of Oakland, acting by and through its Board of Port Commissioners ("Port"), pursuant to Rule 205 of the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"). The Port shall answer each Interrogatory separately and fully in writing under oath in accordance with the following instructions and definitions, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

The answers should include all information known by the Port or available to the Port directly or through agents, representatives, consultants, advisors, or attorneys as of the date of verification. Answers are due within 30 days unless otherwise agreed by the parties in accordance with the schedule to be developed pursuant to Rule 201 and the Port must thereafter supplement such responses as and when required by the Rules, to be updated through the date of hearing.

INSTRUCTIONS

1. All Interrogatories should be answered on the basis of your knowledge, including that of your representatives, agents, consultants, advisors and, unless privileged, attorneys. Each answer should identify all persons involved or assisting in the response to that Interrogatory, including but not limited to the person from whom the information contained in each answer was obtained. If you cannot answer any Interrogatory on the basis of your personal knowledge, answer the Interrogatory on the basis of your information and belief; all such responses, however, should indicate that the answer is based on your information and belief, rather than your personal knowledge.

2. If you cannot answer an Interrogatory after conducting a reasonable investigation, please so state and answer to the extent you can, stating what information you cannot provide and stating what efforts you have made to obtain the requested information.

3. If you contend that the answer to any Interrogatory is privileged, in whole or in part, or if you otherwise object to any part of the Interrogatory, please identify the nature of the privilege which is being claimed, set forth the privilege rule being

invoked, and identify each person having knowledge of the factual bases on which the privilege or other objection is asserted.

4. If you object to, or otherwise decline to respond to any portion of an Interrogatory, answer that portion of the Interrogatory to which you do not object or to which you do not decline to answer. If you object to an Interrogatory on the ground that it is too broad, answer the Interrogatory to the extent that it can be more narrowly construed. If you object to an Interrogatory on the ground that to answer the Interrogatory would constitute an undue burden, please answer the Interrogatory to the extent that it can be answered without undertaking an undue burden.

5. You are under a continuous obligation to supplement your answers to these Requests under the circumstances specified in Rule 201(j)(2).

6. Unless otherwise specified, the Interrogatories are intended to be limited to the period from 2002 to the present.

DEFINITIONS

As used herein, the following definitions apply:

“Agenda Report” means the Agenda Report for the Board Meeting on March 3, 2009, titled “Authorizing the Executive Director to Execute a Concession and Lease Agreement with Ports America Outer Harbor, LLC for the Use and Operation of Berths 20 through 24 in the Outer Harbor and to Make Certain Findings in Connection Therewith.”

“Agent” means any agent, employee, officer, director, attorney, consultant, advisor, independent contractor, subcontractor, representative, or any other person acting at the direction of or on behalf of another.

“Certificate of an Authorized Board Representative” means the Certificate of an Authorized Board Representative Concerning Disposition of Port Facilities Pursuant to Section 5.13 of the Senior Indenture dated February 26, 2009.

“Certificate of Consultants” means the Certificate of Consultants Concerning Disposition of Port Facilities Pursuant to Section 5.13(c) of the Senior Indenture dated February 26, 2009.

“Certificate of Director of Maritime” means the Certificate of the Director of Maritime Concerning Fair Market Value of Port Facilities to be leased under Section 5.13 of the Indentures.

“Certificate of Financial Advisor” means the Certificate of Financial Advisor Concerning Funding of the Port’s Capital Improvement Program dated February 26, 2009.

“CEQA” means the California Environmental Quality Act.

“Communication” includes, but is not limited to, correspondence, telephone calls, facsimiles, electronic mail (“e-mail”), and meetings; and records of such communications, including but not limited to transcripts, notes, records, memoranda, and recordings of such communications, in whole or in part.

“Complaint” means the Complaint of SSA Terminals, LLC and SSA Terminals (Oakland), LLC filed in this proceeding.

“Complainant” means SSA Terminals, LLC and SSA Terminals (Oakland), LLC.

“Concession Agreement” means the PAOHT Lease or the Concession Agreement attached to the RfP, as the context requires.

“Concessionaire Improvements” means all buildings, structures, alterations or improvements, including the installation, construction, extension, erection,

remodeling or repair of any fixtures, building or structure on the PAOHT Premises (other than the cranes), and all substitutions or replacements thereof or to existing improvements on the PAOHT Premises, both interior and exterior, structural and non-structural, and ordinary and extraordinary, including any new improvements, change in the grade of the PAOHT Premises and any gasoline, diesel or other fuel storage or fueling facility, in each case made by PAOHT.

“Crane Lease” means the Crane Lease(s) dated for reference purposes as of January 1, 2010, between the Port and PAOHT for the lease of certain Port-owned cranes, including the lease of four (4) port cranes to PAOHT without any additional rent referred to in the Agenda Report.

“Date” means the exact date, month and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events.

“Describe in detail” means as follows:

- a. When used to refer to actions, identify each action by date, persons involved, actions taken, and documents involved. For all such persons or documents, identify such persons or documents in accordance with these instructions.
- b. When used to refer to an allegation, identify all evidence upon which you intend to rely to support the allegation and the legal basis for the allegation.

The words “document” and “documents” shall be defined in the customary and broad sense to include all written, electronic, digital, or photographic materials that are now or were formerly in the Port’s possession, custody or control, whether stored in paper files or electronically, including without limitation: reports, memoranda, correspondence, electronic mail, excel charts, records, written policies, notes,

summaries or records of conversations or meetings, telephone messages, drafts of any documents, copies of any document with added notations or comments, photographs, and sound or video recordings.

“Evaluation Committee” means the Evaluation Committee designated by the Port pursuant to Section 3.2.2 of the RfP.

“Exhibit C” means Exhibit C to the Certificate of Consultants Concerning Disposition of Port Facilities Pursuant to Section 5.13(c) of the Senior Indenture dated February 26, 2009.

The terms “identify” or “state the identity of” mean as follows:

- a. When used to refer to a non-natural person, provide the entity’s full name, address of its main office or principal place of business, all addresses used by the entity, its state of incorporation, if any, phone number of its principal place of business, and phone number for each address used by the entity.
- b. When used to refer to a natural person who is not an expert witness expected to be called at trial, provide his full name, occupation, present employer, business address and telephone number, and his home address and telephone number and a summary of the anticipated testimony from such person, if any;
- c. When used to refer to a natural person who is expected to be called as an expert witness at trial, provided all information required of a natural person who is not an expert witness pursuant to subsection b. above, and in addition state said witness’ field of expertise and qualifications as an expert;

- d. When used to refer to a “document,” state the date of the document; its title, if any; specify the author and each person who participated in preparing the document; the person or persons to whom it is addressed; the person or persons who were intended to receive one or more copies of all or part of the document at or about the time it was sent or delivered to its intended recipient; and specify each person who presently has possession, custody or control of the original and/or any copies of the document.
- e. When used to refer to a “communication,” state the date of the communication, the mode of communication (face-to-face discussion, telephone conversation, memorandum, letter, etc.), specify the person conveying information (the communicator), specify the person to whom the communication was directed and the persons to whom copies of the communication, if any, were sent, summarize the substance of the communication, and identify all witnesses to the communication.

“Feasibility Consultants” means Ricondo and Associates, Inc., BST Associates, and C.H. Elliott & Associates.

“Financial Advisor” means Montague DeRose and Associates, LLC.

“IPI Cargo” or “Interior Point Intermodal Cargo” means cargo originating from or terminating at the following geographic locations: the States of North Dakota, South Dakota, Nebraska, Colorado, New Mexico or States easterly thereof, or the Northwest Territories of Canada, the Canadian Provinces of Manitoba or Northwest Territories or Canadian Provinces easterly thereof.

“Improvements” means the Improvements by the Port to the SSAT Premises listed in Exhibit C to the SSAT Assignment.

“Indentures” means that certain Trust Indenture, dated as of April 1, 1989, as later amended and restated by the Amended and Restated Master Trust Indenture dated as of April 1, 2006, as amended and supplemented from time to time by and between the Board of Port Commissioners of the City of Oakland California (“Board”) and U.S. Bank National Association, as successor trustee (“Trustee”), and that certain Intermediate Lien Master Trust Indenture, dated as of October 1, 2007 as amended and supplemented from time to time, by and between the Board and the Trustee, in connection with the concession and lease of certain Port facilities.

“ITS” means International Terminal Services, Inc.

“PAOHT” means Ports America Outer Harbor Terminal, LLC.

“PAOHT Lease” means the Port of Oakland Concession and Lease Agreement for Berths 20-24 between the City of Oakland (acting through the Board of Port Commissioners) and PAOHT.

“PAOHT Premises” means Berths 20-24, consisting of approximately 175 acres of berthing space, wharf and related backlands beginning with Berths 20/21 and continuing along the Outer Harbor to Berth 24.

“Person” means any individual, corporation, proprietorship, partnership, trust, association or any other entity.

The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts controverts or contradicts.

“Port” means the Respondent.

“Proceeding” means this proceeding before the FMC captioned *SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. The City of Oakland, acting by and through the Board of Port Commissioners*.

“RBC” means RBC Capital Markets Corporation.

“RBC Letter” means the letter dated February 25, 2009 from RBC Capital Markets Corporation to the Board of Port Commissioners of the City of Oakland, California re Port of Oakland Outer Harbor Berth Area Proposed Concession.

“Request for Qualifications” or “RfQ” means the Request for Qualifications Port of Oakland Outer Harbor Terminal Concession issued by the Port of Oakland with a due date of June 18, 2008.

“Request for Proposals” or “RfP” means the Request for Proposals Port of Oakland Outer Harbor Terminal Concession issued by the Port of Oakland on or about September 5, 2008.

“RfP Addendum No 1” means the addendum amending the RfP issued by the Port of Oakland on or about January 9, 2009.

“Sponsors” or “Proposers” means HHH Oakland, Inc. (an affiliate of Ports America Group) and Terminal Investment Limited.

“SSAT Assignment” means the Berths 57-59 Amended and Restated Non-Exclusive Preferential Assignment Agreement between the Port of Oakland and SSAT.

“SSAT Cranes” has the meaning set forth in Section 1.3 of the SSAT Assignment.

“SSAT Premises” means the improved land and water area known as Berths 57-59 and as more fully described in the SSAT Assignment.

“Submittal Letter” means the letter dated February 17, 2009, from Stephen Edwards, President & Chief Executive Officer, Ports America Group, and Vikram Sharma, Chief Executive Officer, Terminal Investments Limited, to Jean Baker, Port of Oakland re “Port of Oakland Outer Harbor Terminal Concession Binding Offer Submissions.”

“Upfront Rent” has the meaning set forth in Section 4.2 of the PAOHT Lease.

The term “third party” or “third parties” refers to individuals or entities that are not a party to this proceeding.

The words “you,” “yours” and/or “yourselves” means the Port and any Commissioners, directors, officers, employees, agents, consultants, representatives, or other persons acting, or purporting to act, on the Port’s behalf.

The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa; the terms “and” or “or” shall be both conjunctive and disjunctive; and the term “including” shall mean “including without limitation.”

Unless otherwise defined, all words and phrases used in these Interrogatories shall be accorded their usual meaning.

INTERROGATORIES

In accordance with the Instructions and Definitions set out above, the Port is hereby requested to answer the following Interrogatories:

1. Identify all commissioners, directors, officers, employees, agents, consultants, advisors, representatives, or other persons acting, or purporting to act,

on the Port's behalf known to you to have knowledge concerning the following subjects and where more than one person has knowledge concerning an issue, identify all such persons and further *specify the person who is most knowledgeable*:

- a. RfQ
- b. RfP
- c. RfP Addendum No. 1
- d. Submittal Letter
- e. Agenda Report
- f. Certificate of Director of Maritime
- g. Certificate of an Authorized Board Representative
- h. Certificate of Consultants
- i. Certificate of Financial Advisor
- j. RBC Letter
- k. Evaluation Committee
- l. Exhibit C
- m. The negotiation of the PAOHT Lease
- n. The requirement of the Upfront Rent in Section 4.2 of the PAOHT Lease
- o. The requirement of the Guaranty Funds in Section 4.1 of the PAOHT Lease.
- p. The Indentures, including the defeasance payments required by the Indentures.
- q. Crane Lease
- r. Concessionaire Improvements

- s. SSAT Assignment
- t. Improvements at the SSAT Premises
- u. The assignment of Berth 24 to ITS
- v. ITS and its use of Berth 24 after December 31, 2009
- w. Compliance of the PAOHT Lease with CEQA.

2. Identify all documents (including studies, projections, reports, analysis, recommendations and memorandum) that pertain to the following statement in Exhibit C, pages C-5 to C-6:

- o SSAT Terminal: the lease extends beyond the end of the forecast period. Container throughput already exceeds the MAG. Revenues are generated from Container charges, acreage charges and IPI guarantees. This includes a credit associated with amortization of terminal improvements. It is projected that some of the carriers using SSAT will switch to OHT, after this terminal is operational (in FY 2010). It is also projected that SSAT will attract additional volumes from existing tenants to partially offset this loss. The net loss of container traffic is expected to impact the revenue stream from containers above the breakpoint during this period.

3. Describe in detail the “credit associated with amortization of terminal improvements” referred to in Exhibit C in reference to the “SSAT Terminal.”

4. Identify all provisions in the PAOHT Lease or any other documents which you contend require PAOHT to make Concessionaire Improvements.

5. Identify all provisions in the PAOHT Lease or any other documents which you contend require PAOHT to “invest over \$2.5 billion to improve the terminal over the life of the concession” discussed in the Agenda Report. Describe in detail all such improvements and the date(s) which such improvements are estimated to be made.

6. Identify all Concessionaire Improvements that PAOHT has notified the Port it intends to make pursuant to Article 25 of the PAOHT Lease, including the dollar value thereof.

7. State whether you contend that any Concessionaire Improvements to be made by PAOHT in 2010 are different from improvements that SSAT is required to make under the SSAT Assignment, and if so, describe in detail the basis for such contention.

8. Describe in detail all new ocean common carrier business that PAOHT has committed to bring to the Port.

9. Describe in detail any increase in business by ocean common carriers already calling at the Port that PAOHT has committed to obtaining.

10. Describe in detail the differences between the facilities at the SSAT Premises and the PAOHT Premises.

11. Describe in detail all Concessionaire Improvements and any other improvements that you contend that PAOHT must make at the PAOHT Premises, including the dollar value thereof.

12. Describe in detail all repairs or Concessionaire Improvements and any other improvements that you contend are needed to make the PAOHT Premises competitive with the facilities at SSAT Premises. Which of these repairs or improvements are required to be made by PAOHT and what is the estimated cost of each?

13. Describe in detail all repairs or improvements that the Port has made or has agreed to make at the PAOHT Premises. What is the estimated cost of each?

14. Describe in detail all repairs which the Port contends are required to be made by third parties (i.e., anyone other than the Port or PAOHT) at the PAOHT Premises. Identify the third party involved and the estimated cost of the repairs in each instance.

15. Describe in detail the basis for the Port's contention in the Agenda Report that the PAOHT Lease is "categorically exempt from requirements of the California Environmental Quality Act ("CEQA") pursuant to the Port CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing."

16. Describe in detail all arrangements for ITS's use of Berth 24 prior to January 1, 2010.

17. Describe in detail all arrangements for ITS's use of Berth 24 after January 1, 2010.

18. Describe in detail all arrangements between PAOHT and ITS relating to the continuation of service to customers currently calling at Berth 24, including all requests for Port consent thereto.

19. Describe in detail all complaints of which you have knowledge pertaining to the service provided by SSAT at the SSAT Premises, including the identity of all persons voicing such complaints.

20. Describe in detail all communications you have had since January 1, 2008, with any SSAT customer concerning its use of Berth 24 or the PAOHT Premises.

21. Identify all design errors and construction defects at the SSAT Premises, including those where claims have been made against architects, engineers, or contractors.

22. Describe in detail for each calendar year beginning in 2002, the dollar amount the Port has spent as required by Section 10.1 of the SSAT Assignment in repairing any structural problems associated with:

- a. the wharf structures, wharf fenders and pilings,
- b. foundations,
- c. underground utilities, or
- d. pavements.

How much of the amount specified for each of these items was related to design errors or construction defects as opposed to normal wear and tear?

23. To the extent available, describe in detail for each calendar year 2010 through 2017 the dollar amount the Port has budgeted or projected to spend as required by Section 10.1 of the SSAT Assignment in repairing any structural problems associated with:

- a. the wharf structures, wharf fenders and pilings,
- b. foundations,
- c. underground utilities, or
- d. pavements.

How much of the amount specified for each of these items is related to design errors or construction defects as opposed to normal wear and tear?

24. Describe in detail for each calendar year beginning in 2002 the dollar amounts the Port has spent as required by Section 10.2 of the SSAT Assignment for:

- a. the replacement and repair of the SSAT Cranes' basic crane structures such as the boom structure, gantry frame, trolley frame, gantry truck frame, and equalizers and machinery house walls and structures, or
- b. replacement as distinguished from repair of the spreaders, major components of basic drive systems of fifty (50) horsepower or greater such as drive motors, drive gear reducers, wire rope drums and structural appurtenances such as pillow blocks and pedestals.

25. To the extent available, describe in detail for each calendar year 2010 through 2017 the dollar amount the Port has budgeted or projected to spend as required by Section 10.2 of the SSAT Assignment for:

- a. the replacement and repair of the SSAT Cranes' basic crane structures such as the boom structure, gantry frame, trolley frame, gantry truck frame, and equalizers and machinery house walls and structures, or
- b. replacements as distinguished from repair of the spreaders, major components of basic drive systems of fifty (50) horsepower or greater such as drive motors, drive gear reducers, wire rope drums and structural appurtenances such as pillow blocks and pedestals.

26. Describe in detail for each calendar year beginning in 2002 the dollar amounts the Port has spent as required by Section 10.2 of the SSAT Assignment for replacing major drive components such as motors of fifty (50) horsepower or greater and gear reducers driven by motors of fifty (50) horsepower or greater.

27. To the extent available, describe in detail for each calendar year 2010 through 2017 the dollar amount the Port has budgeted or projected to spend as required by Section 10.2 of the SSAT Assignment for replacing major drive

components such as motors of fifty (50) horsepower or greater and gear reducers driven by motors of fifty (50) horsepower or greater.

28. Describe in detail for each calendar year beginning in 2002 the dollar amounts the Port has spent as required by Section 10.2 of the SSAT Assignment for spare parts for the SSAT Cranes.

29. To the extent available, describe in detail for each calendar year 2010 through 2017 the dollar amount the Port has budgeted or projected to spend as required by Section 10.2 of the SSAT Assignment for spare parts for the SSAT Cranes.

30. State whether you have analyzed the revenue loss to the Port resulting from the movement of cargo from the SSAT Premises to the PAOHT Premises, and if so, describe in detail the results of such analysis.

31. State whether you have analyzed the revenue loss to the Port resulting from the movement of cargo from the premises of other port tenants to the PAOHT Premises, and if so, describe in detail the results of such analysis.

32. Describe in detail any facts which you contend establish that SSAT and PAOHT are not similarly situated as tenants of the Port.

33. State whether you contend that SSAT and PAOHT are not competitors, and, if so, describe in detail any facts which support such contention.

34. Describe in detail any difference in transportation circumstances between SSAT and PAOHT in handling cargo at the Port.

35. Describe in detail any difference in cargo characteristics handled at the PAOHT Premises and the SSAT Premises.

36. Describe in detail any difference in the commitments to the Port made by SSAT and PAOHT.

37. Describe in detail any differences in the creditworthiness of SSAT and PAOHT.

38. State whether you contend that the Upfront Fee should not be amortized over the 50-term of the PAOHT Lease, and if so, describe in detail the basis for such contention.

39. State whether you contend that the difference in per acre charge to SSAT over that of PAOHT is not excessive, and if so, describe in detail the basis for such contention.

40. State whether you contend that there is a valid transportation factor or factors that justifies the differences between the financial terms of the SSAT Assignment and the PAOHT Lease, and if so, describe in detail each transportation factor on which you rely.

41. State whether the PAOHT Lease is treated as a sale under federal, state or state tax law, and if so, state the amount of such tax and identify the entity which will pay or has paid such tax.

42. Identify all documents or communications between directors, officers, employees, agents, consultants, advisors, representatives or other persons acting, or purporting to act, on the Port's behalf pertaining to any minimum or estimated bid anticipated or expected in response to the RfP.

43. Identify all documents or communications between any director(s), officers(s), employee(s), agent(s), consultant(s), advisor(s), representative(s), or other person(s) acting, or purporting to act, on the Port's behalf and any other person pertaining to any minimum or estimated bid anticipated or expected in response to the RfP.

44. Identify all persons you intend to call as fact witnesses at depositions or hearings pertaining to this matter.

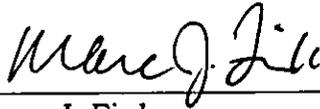
45. Identify all persons you intend to call as expert witnesses at depositions or hearings pertaining to this matter.

46. For each denial in the Port's answer to the Complaint, identify all currently known evidence upon which you intend to rely to substantiate each denial.

47. Describe in detail all information in the possession of the Port that the Port contends exculpates it from liability, that is, information that tends to exonerate the Port of legal responsibility for the allegations of the Complaint.

48. Identify each person who participated in or assisted with the preparation of responses to these interrogatories.

Respectfully submitted,



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**BEFORE THE
FEDERAL MARITIME COMMISSION**

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FEDERAL MARITIME COMMISSION

Docket No. 09-*08*

**SSA TERMINALS, LLC
AND
SSA TERMINALS (OAKLAND), LLC**

COMPLAINANTS

v.

**THE CITY OAKLAND, ACTING BY AND THROUGH
ITS BOARD OF PORT COMMISSIONERS**

RESPONDENT



**COMPLAINANTS' FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
FROM THE CITY OF OAKLAND, ACTING BY AND
THROUGH ITS BOARD OF PORT COMMISSIONERS**

Complainants, SSA Terminals, LLC and SSA Terminals (Oakland), LLC, jointly referred to herein as "SSAT", by their undersigned counsel, hereby propound the following Requests for Production of Documents (the "Requests") upon Respondent City of Oakland, acting by and through its Board of Port Commissioners ("Port"). The Port shall produce the documents requested and otherwise respond to these requests separately, fully and in writing within 30 days unless otherwise agreed by the parties in accordance with the schedule to be developed pursuant to Rule 201 of the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"), and thereafter supplement such responses as and when required by the Rules, to be updated through the date of hearing.

INSTRUCTIONS

1. Wherever a discovery request calls for the identification or production of a document claimed by you to be privileged, separately identify each such document by author, date, the person or persons to whom it was addressed, the person or persons to whom it was sent, the length of the document, and a description of the type of subject matter included in the document. State the type of privilege claimed and the complete factual basis for the assertion of such claim.

2. You are under a continuous obligation to supplement your answers to these Requests under the circumstances specified in Rule 201(j)(2).

3. To the extent that you consider any of the Requests objectionable, answer so much of each Request and each part thereof as is not objectionable in your view and separately identify the part to which you object and state each ground for objection.

4. Where documents in the possession or control of the Port are requested, each Request includes documents not only in the Port's possession, but also documents over which it has control, including documents in the possession of the Port's contractors, subcontractors, consultants, advisors, agents, representatives, experts and attorneys.

5. Unless otherwise specified, the Requests shall be limited to documents prepared or obtained during the period 2002 to the present.

6. All documents shall be produced as they are kept in the usual course of business. Individual files shall be produced separately and labeled to identify the person from whose files they are produced.

7. All documents shall be produced identified by Bates number.
8. Electronic data should be produced in its native format with its metadata preserved.

DEFINITIONS

As used herein, the following definitions apply:

“Agenda Report” means the Agenda Report for the Board Meeting on March 3, 2009, titled “Authorizing the Executive Director to Execute a Concession and Lease Agreement with Ports America Outer Harbor, LLC for the Use and Operation of Berths 20 through 24 in the Outer Harbor and to Make Certain Findings in Connection Therewith.”

“Agent” means any agent, employee, officer, director, attorney, consultant, advisor, independent contractor, subcontractor, representative, or any other person acting at the direction of or on behalf of another.

“Certificate of an Authorized Board Representative” means the Certificate of an Authorized Board Representative Concerning Disposition of Port Facilities Pursuant to Section 5.13 of the Senior Indenture dated February 26, 2009.

“Certificate of Consultants” means the Certificate of Consultants Concerning Disposition of Port Facilities Pursuant to Section 5.13(c) of the Senior Indenture dated February 26, 2009.

“Certificate of Director of Maritime” means the Certificate of the Director of Maritime Concerning Fair Market Value of Port Facilities to be leased under Section 5.13 of the Indentures.

“Certificate of Financial Advisor” means the Certificate of Financial Advisor Concerning Funding of the Port’s Capital Improvement Program dated February 26, 2009.

“CEQA” means the California Environmental Quality Act.

“Communication” includes, but is not limited to, correspondence, telephone calls, facsimiles, electronic mail (“e-mail”), and meetings; and records of such communications, including but not limited to transcripts, notes, records, memoranda, and recordings of such communications, in whole or in part.

“Complaint” shall mean the Complaints SSA Terminals, LLC and SSA Terminals (Oakland), LLC filed in this proceeding.

“Complainants” shall mean SSA Terminals, LLC and SSA Terminals (Oakland), LLC.

“Concession Agreement” means the PAOHT Lease or the Concession Agreement attached to the RfP, as the context requires.

“Concessionaire Improvements” mean all buildings, structures, alterations or improvements, including the installation, construction, extension, erection, remodeling or repair of any fixtures, building or structure on the PAOHT Premises (other than the cranes), and all substitutions or replacements thereof or to existing improvements on the PAOHT Premises, both interior and exterior, structural and non-structural, and ordinary and extraordinary, including any new improvements, change in the grade of the PAOHT Premises and any gasoline, diesel or other fuel storage or fueling facility, in each case made by PAOHT.

“Crane Lease” means the Crane Lease(s) dated for reference purposes as of January 1, 2010, between the Port and PAOHT for the lease of certain Port-owned

cranes, including without limitation, the lease of four (4) port cranes to PAOHT without any additional rent referred to in the Agenda Report.

“Date” shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events.

The words “document” and “documents” shall be defined in the customary and broad sense to include all written, electronic, digital, or photographic materials that are now or were formerly in the Port’s possession, custody or control, whether stored in paper files or electronically, including without limitation: reports, memoranda, correspondence, electronic mail, excel charts, records, written policies, notes, summaries or records of conversations or meetings, telephone messages, drafts of any documents, copies of any document with added notations or comments, photographs, and sound or video recordings.

“Evaluation Committee” means the Evaluation Committee designated by the Port pursuant to Section 3.2.2 of the RFP.

“Exhibit C” means Exhibit C to the Certificate of Consultants Concerning Disposition of Port Facilities Pursuant to Section 5.13(c) of the Senior Indenture dated February 26, 2009.

“Feasibility Consultants” means Ricondo and Associates, Inc., BST Associates, and C.H. Elliott & Associates.

“Financial Advisor” means Montague DeRose and Associates, LLC.

“IPI Cargo” or “Interior Point Intermodal Cargo” means cargo originating from or terminating at the following geographic locations: the States of North Dakota, South Dakota, Nebraska, Colorado, New Mexico or States easterly thereof, or the Northwest

Territories of Canada, the Canadian Provinces of Manitoba or Northwest Territories or Canadian Provinces easterly thereof.

“Improvements” means the Improvements by the Port to the SSAT Premises listed in Exhibit C to the SSAT Assignment.

“Indentures” means that certain Trust Indenture, dated as of April 1, 1989, as later amended and restated by the Amended and Restated Master Trust Indenture dated as of April 1, 2006, as amended and supplemented from time to time by and between the Board of Port Commissioners of the City of Oakland California (“Board”) and U.S. Bank National Association, as successor trustee (“Trustee”), and that certain Intermediate Lien Master Trust Indenture, dated as of October 1, 2007 as amended and supplemented from time to time, by and between the Board and the Trustee, in connection with the concession and lease of certain Port facilities.

“ITS” means International Terminal Services, Inc.

“PAOHT” means Ports America Outer Harbor Terminal, LLC.

“PAOHT Lease” means the Port of Oakland Concession and Lease Agreement for Berths 20-24 between the City of Oakland (acting through the Board of Port Commissioners) and PAOHT.

“PAOHT Premises” means Berths 20-24, consisting of approximately 175 acres of berthing space, wharf and related backlands beginning with Berths 20/21 and continuing along the Outer Harbor to Berth 24.

“Person” means any individual, corporation, proprietorship, partnership, trust, association or any other entity.

The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports,

corroborates, demonstrates, proves, evinces, shows, refutes, disputes, rebuts controverts or contradicts.

“Port” means the Respondent.

“Proceeding” means this proceeding before the FMC captioned *SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. The City of Oakland, acting by and through the Board of Port Commissioners*.

“RBC” means RBC Capital Markets Corporation.

“RBC Letter” means the letter dated February 25, 2009 from RBC Capital Markets Corporation to the Board of Port Commissioners of the City of Oakland, California re Port of Oakland Outer Harbor Berth Area Proposed Concession.

“Request for Qualifications” or “RfQ” means the Request for Qualifications Port of Oakland Outer Harbor Terminal Concession issued by the Port of Oakland with a due date of June 18, 2008.

“Request for Proposals” or “RfP” means the Request for Proposals Port of Oakland Outer Harbor Terminal Concession issued by the Port of Oakland on or about September 5, 2008.

“RfP Addendum No 1” means the addendum amending the RfP issued by the Port of Oakland on or about January 9, 2009.

“Sponsors” or “Proposers” means HHH Oakland, Inc. (an affiliate of Ports America Group) and Terminal Investment Limited.

“SSAT Assignment” means the Berths 57-59 Amended and Restated Non-Exclusive Preferential Assignment Agreement between the Port of Oakland and SSAT

“SSAT Cranes” has the meaning set forth in Section 1.3 of the SSAT Assignment.

“SSAT Premises” means the improved land and water area known as Berths 57-59 and as more fully described in the SSAT Assignment.

“Submittal Letter” means the letter dated February 17, 2009, from Stephen Edwards, President & Chief Executive Officer, Ports America Group, and Vikram Sharma, Chief Executive Officer, Terminal Investments Limited, to Jean Baker, Port of Oakland re “Port of Oakland Outer Harbor Terminal Concession Binding Offer Submissions.”

“Upfront Rent” has the meaning set forth in Section 4.2 of the PAOHT Lease.

The terms “third party” or “third parties” refer to individuals or entities that are not a party to this proceeding.

The words “you,” “yours” and/or “yourselves” mean the Port and any Commissioners, directors, officers, employees, agents, representatives, agents, consultants, advisors or other persons acting, or purporting to act, on the Port’s behalf.

The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa; the terms “and” or “or” shall be both conjunctive and disjunctive; and the term “including” shall mean “including without limitation.”

Unless otherwise defined, all words and phrases used in this Request for Production of Documents shall be accorded their usual.

REQUEST FOR PRODUCTION OF DOCUMENTS

In accordance with the Instructions and Definitions set out above, the Port is hereby requested to identify and produce all of the following documents:

1. Port's Tariff 2-A in effect on February 25, 2009.
2. The most recent master plan for the Port's maritime facilities/terminals.
3. Port CEQA Guidelines.
4. All environmental impact statements issued by the Port pursuant to CEQA for Berths 20-24, or any of them.
5. All notices of exemptions issued by the Port pursuant to CEQA for Berths 20-24, or any of them.
6. All documents which support the Port's contention in the Agenda Report that the PAOHT Lease is "categorically exempt from requirements of the California Environmental Quality Act ("CEQA") pursuant to the Port CEQA Guidelines, Section 15301(p), which exempts renewals, extensions or amendments to leases or license and concession agreements where the premises or licensed activity was previously leased or licensed to the same or another person, and involving negligible or no expansion of use beyond that previously existing."
7. The Indentures.
8. The PAOHT Lease.
9. The Crane Lease.
10. All documents pertaining to offers by any person, including marine terminal operators, to occupy and operate the PAOHT Premises, including offers prior to the RfQ.
11. The Concession Agreement attached to the RfP.

12. All proposals submitted by short listed bidders in response to the RfP.
13. All analyses and/or evaluations prepared by officers, employees, agents, consultants, advisors and representatives of the Port of all proposals submitted by short listed bidders in response to the RfP.
14. All documents between the Evaluation Committee and officers, employees, agents, consultants, advisors and representatives of the Port pertaining to the proposals of all bidders responding to the RfP.
15. All evaluations, recommendations and related documents pertaining to the proposal and financial proposal of the Sponsors or PAOHT provided by officers, employees, agents, consultants, advisors and representatives of the Port to the Evaluation Committee as described in Section 3.2.2 of the RfP.
16. All evaluations of the Proposal and Financial Proposal of the Sponsors or PAOHT by the Evaluation Committee as described in Section 3.2.2 of the RfP.
17. The summary of the Evaluation Committee submitted to the Executive Director which summarized its evaluation of the technical and financial proposals together with its overall ranking of each proposal as described in Section 3.2.3 of the RfP.
18. The Preliminary Notice of Award described in Section 3.2.3 of the RfP.
19. All documents between the Maritime Committee and the Board of Commissioners pertaining to the Preliminary Notice of Award.
20. All documents pertaining to any Requests for Clarification as described in Section 3.3 of the RfP and all responses thereto.
21. The business plan submitted by or on behalf of the Sponsors or PAOHT pursuant to Exhibit B of the RfP and all documents supporting the projections of

PAOHT therein, including the documentation required by paragraphs 1 through 4 of Exhibit B of the RfP.

22. All summaries or evaluations by officers, employees, agents, consultants, advisors and representatives of the Port of the Business Plan submitted by the Sponsors or PAOHT with the Submittal Letter.

23. All documents verifying the claim by the Sponsors in their Submittal Letter that "... the Sponsors have reached an agreement with Mediterranean Shipping Company, S.A. ("MSC"), one of the world's largest container shipping lines, that it will commit its volumes and services in the Port to PAOHT for the full length of the Concession."

24. The "50 year agreement with MSC, the second largest liner company in the world committing all its volumes in the Port to the Outer Harbor Terminal" described in the Submittal Letter and all documents pertaining thereto.

25. All documents between (i) the Port and (ii) the Sponsors or PAOHT pertaining to lease proposals.

26. To the extent not previously provided, all evaluations, analysis and/or summaries relating to the differences between the RfP and the exhibits and forms submitted by the Sponsors with the Submittal Letter.

27. The project data and assumptions prepared by the Port as of February 21, 2009 for the period beginning July 1, 2008 and ending on June 30, 2015 which is referenced in the Certificate of Financial Advisor.

28. The financial models referred to in the Certificate of Financial Advisor.

29. All documents, including data and other information, submitted to the Feasibility Consultants pertaining to the Concession Agreement.

30. All documents (including, amortization schedules, studies, projections, reports, analysis, recommendations and memoranda) that are the basis for the following statement in Exhibit C:

- o SSAT Terminal: the lease extends beyond the end of the forecast period. Container throughput already exceeds the MAG. Revenues are generated from Container charges, acreage charges and IPI guarantees. This includes a credit associated with amortization of terminal improvements. It is projected that some of the carriers using SSAT will switch to OHT, after this terminal is operational (in FY 2010). It is also projected that SSAT will attract additional volumes from existing tenants to partially offset this loss. The net loss of container traffic is expected to impact the revenue stream from containers above the breakpoint during this period.

31. All documents submitted by the officers, employees, agents, consultants, advisors and representatives of the Port to RBC Capital Markets Corporation in connection with the RBC Letter, including the historical revenues received by the Port from the existing lease in relation to the Outer Harbor Berth Area and other analysis.

32. The accompanying agenda report referred to in the Agenda Report which discusses the use of a portion of the Upfront Rent to partially defease certain Port revenue bonds.

33. The feasibility report referred to in the Agenda Report which was prepared in connection with the issuance of its 2007 Intermediate Lien Refunding Revenue Bonds which projected an annual rent for the PAOHT Premises of \$24.9 million in 2010.

34. All documents pertaining to any effort, initiative, proposal or other act by the Port to persuade or to assist port users to relocate operations from the SSAT Premises to the PAOHT Premises, including Berth 24 utilized by ITS.

35. All documents pertaining to the arrangements for ITS to use Berth 24 prior to January 1, 2010, including the ITS Assignment.

36. All documents pertaining to the arrangements for ITS to use Berth 24 or any other portion of the PAOHT Premises after January 1, 2010.

37. All documents pertaining to any Concessionaire Improvements which PAOHT proposes to construct or install at the PAOHT Premises and all major equipment to be acquired by PAOHT that PAOHT proposes to install at the Premises during calendar years 2010 through 2017.

38. The "Pre-Execution Date Condition Report" summarizing the physical, on site inspection of the Premises observed by the Proposers and the Port, including photographs.

39. The final on-site inspection report of the PAOHT Premises as described in Section 2.1(b)(ii) of the PAOHT Lease, including photographs.

40. All documents pertaining to the latest physical, on site inspections of the SSAT Premises by the Port, including photographs.

41. All correspondence, notes, records, memoranda, or other documents among or between any Commissioners, directors, officers, employees, agents, consultants, advisors, representatives or other person acting, or purporting to act, on the Port's behalf pertaining to the SSAT Assignment and the allegations of the Complaint.

42. All correspondence, notes, records, memoranda, or other documents between (i) any Commissioners, directors, officers, employees, agents, consultants, advisors, representatives or other person acting, or purporting to act, on the Port's

behalf or (ii) third persons, pertaining to the SSAT Assignment and the allegations of the Complaint.

43. All documents that the Port contends exonerate it of legal responsibility in this proceeding.

44. All documents that the Port contends support the existence of a valid transportation factor or factors justifying the difference in terms provided to PAOHT under the PAOHT Lease as compared to the terms the Port has provided to SSAT under the SSAT Assignment.

45. All documents that the Port contends support the Port's contention that its actions do not exceed what is necessary to achieve a valid transportation purpose justifying the difference in terms provided to PAOHT under the PAOHT Lease as compared to the terms the Port has provided to SSAT under the SSAT Assignment.

46. The resume, engagement agreement, fee arrangement, invoices, and reports, including drafts of reports, of any and all experts or consultants retained by the Port in connection with this proceeding.

47. All documents between the Port and ITS pertaining to the subject matter of the Complaint not covered by the foregoing requests.

48. All documents between the Port and PAOHT pertaining to the subject matter of the Complaint not covered by the foregoing requests.

49. All documents relied upon or identified in responding to the First Set of Interrogatories filed by the Complainants in this proceeding.

Respectfully submitted,



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